



#5 Jeff J.F.

Docket No.: U5584.0000/P185-A
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Richard J. Melker, et al.

Confirmation No.: 7980

Application No.: 09/457,709

Group Art Unit: 3761

Filed: December 10, 1999

Examiner: Weiss Jr., J.

For: HYBRID MICROPROCESSOR
CONTROLLED VENTILATOR UNIT

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
Washington, DC 20231

Dear Sir:

In response to the election of species requirement set forth in the Office Action mailed January 7, 2002, applicant hereby provisionally elects the species of FIGS. 1-16 for continued examination, with traverse. Claims 37-85 read on the provisionally elected species.

The Examiner has required an election of a single disclosed species between the below referenced species.

Group I, a method of ventilating a patient based upon the patient's body length (FIGS. 1-16); and

Group II, a method of ventilating a patient based upon the rate of rise between target and actual pressure wave forms (FIGS. 17-20e).

M.P.E.P. § 803 states: "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the

RECEIVED
U.S. PATENT AND TRADEMARK OFFICE
APR 10 2002
MAIL ROOM

merits, even though it includes claims to distinct or independent inventions." Clearly, the present application can be searched and examined in its entirety without serious burden, specifically since the elected species contains 49 claims and the non-elected species adds only an additional four claims. Therefore, all of the claims should be examined at this time.

Dated: April 8, 2002

Respectfully submitted,

By _____

Donald A. Gregory

Registration No.: 28,954

DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP

2101 L Street NW

Washington, DC 20037-1526

(202) 775-4798

Attorneys for Applicant